

**(1977) 03 PAT CK 0006**  
**In the Patna High Court**  
**Case No : Civil Writ Jur Case No. 2620 of 1976**

Ganesh Prasad Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 24-03-1977

**Acts Referred:**

Bihar Land Reforms (fixation Of Ceiling Area And Acquisition of Surplus Land)  
(Amendment) Act, 1976 — Section 4, 5(3)

**Citation :** AIR 1978 Patna 60

**Hon'ble Judges :** S. Sarwar Ali, J; Gobind Mohan Misra, J

**Bench :** Division Bench

**Advocate :** Balbhadra Pd Singh and Janardan Pd. Singh, for the Appellant; Md. Khaleel, (G.P. No. 3) and Eqbal Ahmad, (J.C. to G.P. No. 3), for the Respondent

**Final Decision :** Allowed

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## Judgement

1. "It is a canon of statutory interpretation founded on happy experience, that Parliament is presumed to intend justice and to avoid injustice." So said Lord Simon in Rugby Joint Water Board v. Footit 1972 1 All ER 1057 reiterating a rule which has been fully recognised, and appropriately applied, in interpreting provisions of Statute. The instant case is also one of those cases where in order to get at the legislative intent this rule of interpretation has to be invoked. But first the facts,

2. A proceeding under the provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act was started against Brajdeo Narain Singh (who died during the pendency of the revision application before the Board and was substituted by his heirs). An objection was filed to the draft statement which was served on the said Brajdeo Narain Singh. The objection was heard and disposed of under Annexure 3. An appeal was filed which has been disposed of under Annexure 2, Thereafter a revision filed before the Board of Revenue, has been disposed of under Annexure 1 by the Additional Member Board of Revenue. The petitioners challenge all these Annexures and pray that

they be quashed.

3. The objections with which we are concerned in this case relates to classification, of the lands, exclusion of property gifted by the aforesaid Brajdeo Narain Singh to his daughter by a registered deed of gift dated 7-3-1963, and that the petitioners were entitled to additional land permitted to be held u/s 5 (3) (i) of the Act. We shall deal with each of these objections separately.

4. The question whether the lands gifted to petitioner No. 4 should or should not have been excluded from consideration depends on whether she was major on the appointed day. The learned counsel for the petitioners contended that the finding in relation thereto is vitiated. Since, however, we are remanding the case we do not propose to express any opinion on this question, which may be raised before the authorities, when the question of classification and additional land permitted to be held is being considered.

5. According to the draft statement 8.17 acres were class I and 20.94 acres of lands were class II lands. This has been accepted by the authorities and the objection of the land-holder to the contrary has been rejected. In holding that the lands as Class I and Class II lands, the authorities came to the following conclusions:

(a) That a portion of land was irrigated by State tubewell which was constructed in the year 1972,

(b) 20.94 acres classified as class II land was being irrigated from private tubewells belonging to different persons and not the land-holder, who had only one tubewell. In other words, although, the land-holder had only one tubewell so far as his lands were concerned they were, in fact, irrigated by tubewells which belonged to the other raiyats.

6. The first contention that has been raised in this connection is that the appointed day is 9th of Sept., 1970. The ceiling area has to be determined as on the appointed day. Consequently, it has to be seen whether the irrigational facilities were available on that day. The fact that the State tubewell was constructed about two years after the appointed day would not be relevant for the purpose of classification of the lands in question and would not make the lands class I land. The view taken by the authorities is that the fact that the tubewell was constructed in the year 1972 is not of importance and it does not make any difference, since 9-9-1970 is not relevant for the purpose of classification of the land. The contention of the petitioner appears to be correct. After the amendment brought about by Act 22 of 1976, it is now clear, in view of the amendment of Section 4 of Act 12 of 1976, that the ceiling area has to be determined with reference to the appointed day, the actual words used in the section being "on the appointed day the following should be ceiling area for one family unit for the purpose of this Act". Clause (a) of Section 4 of the Act fixes the area as 15 acres so far as lands irrigated or capable of being irrigated by State tubewells etc. are concerned. It is thus obvious that classification of lands

has to be done on the appointed day. If irrigation facilities were not available on that day through such tubewell, the lands in question cannot be classified as class I lands. In this connection, it will be pertinent to refer to Section 5 (3) (ii), which states that any further improvement will not be taken into account. The authorities thus erred in law in holding that 8.17 acres of land was class I land, on the ground that it was irrigated or capable of irrigation by the tubewell which was constructed in the year 1972.

7. We next take up the contention in relation to classification of lands as class II lands. The relevant provision is as follows:

"4 (b) eighteen acres, equivalent to 7, 2846 hectares of Land irrigated by such private lift-irrigation or private tubewells as are operated by electric or diesel power, and provide or are capable of providing water for more than one season (hereinafter referred to as class II land);

Explanation:-- Private lift irrigation or private tubewells mean those which are not constructed, maintained, improved or controlled by the Central or the State Government or by a body corporate constituted under any law".

In the instant case the petitioner owns only one tubewell. There is no finding as to how much land of the land-holder is irrigated or capable of being irrigated from the tubewell which belongs to him. The basis of coming to the conclusion regarding classification is that there are tubewells of other persons in the vicinity of the lands of the petitioners and the lands are, in fact, irrigated from such tubewells. It is, therefore, the fact of irrigation from tubewell of others which has been taken to be the determinative factor. The contention of the petitioners is that it is only where the lands are irrigated or capable of irrigation by assured source of irrigation mentioned in Section 4 (b) that the provisions would be applicable. Where irrigation is dependent on the volition of others the sub-clause aforesaid is inapplicable. The petitioners, the learned counsel says, must have a right to irrigate the lands by tubewell before the authorities can bring the Land so irrigated or capable of irrigation within the clause. The contention of the State on the other hand is that the words used in the section are very wide. There are no qualifying words. Consequently, if there is factual irrigation of the lands by tubewell etc. the lands would be class II lands. Thus the State canvasses a wider interpretation. It says interpret the words in their widest amplitude. The petitioners on the other hand invite this Court to give a restrictive interpretation and so the problem now, as ever, in similar circumstances is to fathom the legislative intent.

8. When we speak of legislative intent we mean the intention as discernible from the words used. When the language of the legislation has only one meaning, considerations of harshness injustice or convenience will not induce the Court to change the meaning by interpretation. But where words are capable of more than one meaning or where there is a choice between wide and expansive meaning being ascribed to the words as compared to narrow and restrictive

meaning, considerations of harshness, reasonableness, justice and the like have a definite role to play.

9. In *Bhudan Singh and Another Vs. Nabi Bux and Another*, Hegde, J. said:

"It is necessary to mention that it is proper to assume that the law-makers who are the representative of the people enact laws which the society considers as honest, fair and equitable. The object of every legislation is to advance public welfare. In other words, as observed by Crawford in his book on statutory constructions that the entire legislative process is influenced by considerations of justice and reason. Justice and reason constitute the great general legislative intent in every piece of legislation. Consequently, where the suggested construction operates harshly, ridiculously or in any other manner contrary to prevailing conceptions of justice and reason, in most instances, it would seem that the apparent or suggested meaning of the statute was not the one intended by the law-makers. In the absence of some other indication that the harsh or ridiculous effect was actually intended by the legislature, there is little reason to believe that it represents the legislative intent."

We shall now only mention a few decisions of the Indian, English and American courts, where the emphasis has been on the result or consequence of the competing interpretations, pointing out the occasions where concept of justice has a definite role to play.

10. In *H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another*, Shah, J. observed:

"Above all, the Court will avoid repugnancy with accepted norms of justice and reason."

Some twenty four years earlier Chief Justice Beaumont observed in *Emperor Vs. Somabhai Govindbhai*, :

"A Judge must always consider the effect of any construction which he is asked to put on an Act of Parliament and if he comes to the conclusion that a particular construction leads to a result which he considers irrational or unfair, he is entitled, and indeed bound, to assume that the legislature did not intend such a construction to be adopted, and to try to find some more rational meaning to which the words are sensible."

11. We may now refer to some of the English decisions. Brett, L. J. observed in *ex parte Corbett in re Shand* (1680) 14 Ch D 122 at p. 129 :

"..... there is a general rule of construction of statutes which is applicable to this matter, namely, that, unless you are obliged to do so, you must not suppose that the legislature intended to do palpable injustice,"

Coming to recent times in *Holmes v. Bradfield Rural District Council* (1949) 1 All ER 381 at p. 384 Finnemore, J. said:

"..... If there are two different interpretations of the words in an Act, the court will adopt that which is just, reasonable and sensible rather than that which is none of those things."

In *Inland Revenue Commissioners v. Hinchy* (1960) 1 All ER 505 at page 512) Lord Reid observed:

"One is entitled and, indeed, bound to assume that Parliament intends to act reasonably and, therefore, to prefer reasonable interpretation of a statutory provision if there is any choice."

The same law was put thus by Lord Reid in *Cramas Properties Ltd. v. Connaught Fur Trimmings Ltd.* (1965) 2 All ER 382 at p. 385):

"..... One must always remember that the object in construing any statutory provision is to discover the intention of Parliament and that there is an even stronger presumption that Parliament does not intend an unreasonable or irrational result."

Lastly, we may refer to a decision of the U. S. Supreme Court in the case of *Henry Brewer v. Jacob Bloucher and Daniel Blougher* (1839 ) 10 L Ed 408 at p. 418) where Chief Justice Teney said:

"It is undoubtedly the duty of the court to ascertain the meaning of the Legislature, from the words used in the statute, and the subject-matter to which it relates; and to restrain its operation within narrower limits than its words import, if the court are satisfied that the literal meaning of its language would extend to cases which the Legislature never designed to embrace in it."

12. We may mention here that *Budhan Singh's case* *Madhov Rao Scindia's case* and *Ex parte Walton in re Levy* (1881) 17 Ch D 182) are amongst cases where a restrictive meaning has been given to the word used by the legislature.

13. Now we must look to the result or consequence of the two interpretations. The interpretation put forth by the State would mean that even if there has been a casual or accidental irrigation of the land on the appointed day by one of the sources of irrigation mentioned in Section 4 (b), the land would have to be classified as class II land. Even in cases where availability of irrigational facility is available on the sweet-will of a third person similar would be the result. The land-holder may have no right to irrigate the land, yet the mere fact of irrigation on a particular date would lead to the land being classified as class II Land, although the land-holder may not be in a position to irrigate the land thereafter or may not have irrigated it earlier as well. Such a situation, in our view could not have been contemplated by the legislature, for that would clearly lead to injustice and hardship. The narrower meaning that is put forth on behalf of the petitioner is much more in consonance with justice and common sense. It is only where a land-holder has assured source of irrigation, that the provision can be said to apply; whether to irrigate or not to irrigate depends on his volition, and not on the sweet-will of another. The assured irrigation may either be because the land-

holder himself owns the tubewell or it may be because of certain contractual agreement between the land-holder and third persons, or any such circumstances as can assure irrigation of the lands in question. We may state that if we accept the wider interpretation suggested by the State it would even mean that although the land of land-holder has never been irrigated by an adjoining tubewell belonging to another land-holder for then the land can be said to be capable of irrigation. We are not persuaded to accept that such irrational and unfair result was intended by the legislature, Expression irrigated or capable of providing water has, therefore, not been used by legislature in the wide sense which is being canvassed in this case on behalf of the State. We, therefore, accept the contention of the petitioner that a restrictive meaning must be given to the words in Section 4 (b) which accords with justice and reasons and avoids irrational and unfair consequences.

14. It is clear that in the instant case there has not been any examination of the question from the point of view whether the irrigational facilities available for 20.94 acres of land are assured irrigational facilities. The matter has, therefore, to be re-examined in the light of the law as explained.

15. Learned counsel for the petitioners pointed out that the Additional Member, Board of Revenue has accepted that one of the petitioners, Ganesh Pd. Singh is major but has not taken into consideration the fact that he has got a wife and four children. In view of the number of members in his family he is entitled to hold extra land sanctioned in Section 5 (3) (ii) of the Act. This aspect also needs re-examination,

16. In the result, we allow this writ application, quash Annexures 1, 2 and 3 and direct the disposal of the objections u/s 10 (3) of the Act in accordance with law and in the light of the law as explained in this judgment. It appears that even on the petitioners' case 5.62 acres will be in excess of ceiling area and we, therefore, direct the petitioners to indicate to the authorities 5.62 acres of land which may be treated as surplus and be immediately dealt with in accordance with law. In case the authorities find that some further area has to be declared as surplus suitable steps will also be taken later in that regard in accordance with law. We fix 15th April, 1977 as the date on which the petitioners must appeal before the Sub-divisional Officer and give details of 5.62 acres of land as directed above. On that date another date should be fixed for hearing of objection and disposal thereof according to the law. The parties, including the State, may then adduce such evidence as they may be advised in support of their respective cases. There will be no order as to costs.